No. 24-1180

In The
Supreme Court of the United States

CORRINE THOMAS, *ET AL.*,

Petitioners,

v.

COUNTY OF HUMBOLDT, CALIFORNIA, *ET AL.*,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

REPLY BRIEF FOR PETITIONERS

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REPLY

This Petition presents one purely legal question: Is the Seventh Amendment's civil-jury right incorporated against the states? As Petitioners explained, Seventh Amendment incorporation is an issue of national importance that has been foreclosed by precedent since before this Court recognized the incorporation of *any* protections in the Bill of Rights. See *Minneapolis & St. Louis R. Co.* v. *Bombolis*, 241 U.S. 211 (1916).

In response, Humboldt County does not dispute the issue's national importance. It does not dispute that *Bombolis* was wrongly decided. And it does not dispute that, given *Bombolis*, only this Court can decide whether the civil-jury right is incorporated. Regardless of the answer, the Question Presented is a compelling candidate for review.

Unable to undermine the issue's importance, the County makes two moves. *First*, it slips in a second question presented (BIO i): the merits of Petitioners' Seventh Amendment claim, which the courts below could not consider under *Bombolis*. It then offers reasons not to resolve the very question it impermissibly added.

Second, the County urges this Court to simply wait and incorporate the civil-jury right later. And it's no wonder. For places like Humboldt, juryless enforcement actions are big business. The longer the Court waits to decide the incorporation question, the longer these governments can profit from their deprivation of a fundamental right.

Humboldt's self-interest aside, however, the case for waiting is weak. The County claims the issue would benefit from factual development, but incorporation is purely legal and foreclosed by precedent. Developing exactly how Humboldt administers its code-enforcement program will shed no light on the Seventh Amendment's incorporation. Similarly, the County claims the issue would benefit from percolation. But incorporation is, again, foreclosed by precedent. The issue cannot percolate.

Although there's no benefit to waiting, Petitioners have identified a risk. Following *SEC* v. *Jarkesy*, 603 U.S. 109 (2024), the lower courts are beginning to recalibrate the Seventh Amendment's public-rights exception. Under *Bombolis*, however, they can do so for only federal enforcement actions. Humboldt agrees (BIO 33) that this process currently excludes "unique" state and local enforcement regimes "not typical" in the federal system. As a result, a lot of these cases elide Seventh Amendment scrutiny because of how many states do not follow *Jarkesy* or *Tull* v. *United States*, 481 U.S. 412 (1987). See Pet. 20–21, 24.

Incorporating the Seventh Amendment now, while the law is in flux, would let courts consider a more robust range of common-law analogs and cases with an "unbroken tradition" of adjudication by the political branches. See *Jarkesy*, 603 U.S. at 128–129. This Court should grant the Petition and reconsider *Bombolis* now to ensure a more constitutionally faithful construction of the civil-jury right.

I. Only this Court can determine that the Seventh Amendment binds the states.

The Petition explains that the civil-jury right is fundamental and deeply rooted in this nation's history. Pet. 10–14. Although the right easily satisfies the criteria for incorporation under the modern standard, Pet. 14–18, no court can apply that precedent until this Court reconsiders *Bombolis*, 241 U.S. 211 (1916).

Humboldt does not deny the Question Presented's national importance. And rightfully so: Whether *Bombolis*'s anti-incorporation ruling should stand—despite its flawed rationale—impacts the relationship between the people and their local governments. Only this Court can resolve that question.

II. The civil-jury right is fundamental; it's time to reconsider its incorporation.

With no dispute that the Question Presented is worthy of this Court's attention, the County insists that the timing just isn't right—that it's somehow too early to revisit a 109-year-old error.

The County's timing argument is meritless. The lower courts are starting to grapple with how *Jarkesy* altered their prior approach to the public-rights exception under *Atlas Roofing Co.* v. *OSHA*, 430 U.S. 442 (1977). See, *e.g.*, *Axalta Coating Sys. LLC* v. *FAA*, ___ F.4th ___, 2025 WL 1934352, at *9 (3d Cir. July 15, 2025) (Bibas, J., concurring) ("[A]fter *Jarkesy*, the caselaw is also at war with itself. * * * [T]he result has left us with a theoretical scramble: a public-rights exception that the Founders understood narrowly but

that precedents force us to construe broadly."). Taking up incorporation now will only benefit the law's development. If this Court recognizes the Seventh Amendment's incorporation, that decision will enable courts to consider a broader range of common-law analogs and historical exceptions to the jury requirement. Or, if the Court holds that the Seventh Amendment is *not* incorporated, that decision will clear up the uncertainty around whether *Bombolis*'s obsolete reasoning really allows states to diminish the jury requirement.

Still, the County tries to stall. It argues (BIO 38, 40) that waiting would allow the law to develop exclusively "in litigation involving the federal government and its agencies," which would then create "a robust body of post-*Jarkesy* law" to "serve as a vital guide * * * when and if the Seventh Amendment is incorporated." But again, that gets the timing considerations backward. Developing the public-rights exception with only federal enforcement in mind fails to account for the many features in state and municipal actions that the County agrees (BIO 33) are "not typical" in the federal system. If considering *Bombolis* with fresh eyes is worth doing—and the County doesn't deny that it is—delay will only exacerbate any countervailing reliance interests, not eliminate them.

Humboldt tries two ways to soften the blow of delay. It claims (BIO 40–41) that Seventh Amendment petitions are a dime a dozen. But the array of defects with the petitions it catalogues only spotlights this Petition's virtues.[1] Then, it offers (BIO 40) a familiar

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[1] *Wynn* v. *Associated Press*, No. 24-829 (focused on overturning *N.Y. Times* v. *Sullivan*); *Allco Renewable Energy Ltd.* v. *Agency*

rejoinder in incorporation cases: There's no rush to incorporate because nearly all states already protect the right at some level. *E.g.*, BIO 8, *Timbs* v. *Indiana* (No. 17-1091) ("[W]aiting to decide the incorporation question poses little risk of harm because state constitutions already limit the fines States can impose."). But while the prevalence of state-level protections confirms the right's deep roots, see Calabresi *Amici* Br. 5–7, the federal Constitution's guarantees are "not the less valuable and effective because of the prior and existing inhibition[s] * * * in the constitutions of the several states." *O'Neil* v. *Vermont*, 144 U.S. 323, 363 (1892) (Field, J., dissenting). This case captures that point perfectly. In recent decades, the jury right in the states has eroded below the federal floor. Pet. 20–21, 24; see also BIO 40 (volunteering that California interprets its right based "largely on * * * *Atlas Roofing*"). The growing divergence in the states cements this Petition's importance and the need for this Court to reconsider whether the Fourteenth Amendment requires "a single, neutral principle" to

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of Nat. Resc., No. 24-589 (eight-page petition challenging remedy that Vermont held was equitable in nature); *Dakota Territory Tours, ACC* v. *Sedona-Oak Creek Airport Auth., Inc.*, No 21-1230 (unpreserved claim); *Eric E.* v. *Los Angeles County*, No. 21-1205 (claim dismissed as moot); *Albritten* v. *Cal. Dep't of Forestry*, No. 20-206 (25-page petition containing 17 pages of block quotes); *Recreational Data Servs., Inc.* v. *Trimble Nav. Ltd.*, No. 17-1082 (15 questions presented); *S.S. ex rel. Schmidt* v. *Bellevue Med. Ctr. LLC*, No. 17-450 (whether damages cap violated Seventh Amendment); *Powers* v. *Freihammer*, No. 16-62 (claim estopped).

govern the civil-jury right nationwide. *McDonald* v. *City of Chicago*, 561 U.S. 742, 788 (2010) (plurality).

Given *Bombolis*, that's a question only this Court can answer. There can be no percolation in the meantime. Despite the County's contention (BIO 38, 40) and confusion (BIO 44), giving states a chance to opt-in to *Jarkesy* is not percolation on the Question Presented—whether the Fourteenth Amendment incorporated the civil-jury right. Waiting will only worsen the civil-jury right's uneven stature across our legal system, as local governments divert more common-law claims outside a jury's view.

III. The County's vehicle arguments are meritless.

In the Ninth Circuit, Petitioners' Seventh Amendment claim failed solely because it is "not viable under our court's selective-incorporation precedent." Pet. App. 12a. If that holding was correct, Petitioner's claim was rightly dismissed; if not, it wasn't. No vehicle concerns obstruct the Court's consideration of the Question Presented.

The County's (many) vehicle arguments do not make a dent. Indeed, most have little to do with Petitioners' Question Presented. Humboldt focuses instead on why this Court should not conduct a full review of Petitioners' Seventh Amendment claim. But that second-order merits question is not properly before this Court—only the first-order incorporation question is presented. See *Ramos* v. *Louisiana*, 590 U.S. 83, 107 n.63 (2020) ("The scope of an incorporated right and whether a right is incorporated at all are two different questions."); *Timbs* v. *Indiana*, 586

U.S. 146, 155 (2019) (rejecting respondents' attempt to expand the question presented beyond incorporation). And on that narrow question—the only one before this Court—the County offers no persuasive opposition.

Interlocutory appeal. The County claims (BIO 22, 44) that review is disfavored because Petitioners' Seventh Amendment claim is an "interlocutory issue that lacks finality." But the dismissal of Petitioners' Seventh Amendment claim *is* final. Petitioners appealed a final judgment dismissing their entire case, and the Ninth Circuit "affirm[ed] the district court's dismissal" of their Seventh Amendment claim. Pet. App. 12a. That the Ninth Circuit separately revived *other* claims in no way undermines the finality of Petitioners' Seventh Amendment claim. The Court routinely grants petitions on one issue while separate issues remain below. See Pet. 27; *Medical Marijuana, Inc.* v. *Horn*, 145 S. Ct. 931 (2025); *Brownback* v. *King*, 592 U.S. 209 (2021); Wright & Miller, 17 Fed. Prac. & Proc. Juris. § 4036 (3d ed.).

Exhaustion. The County says (BIO 34) that Petitioners should have to exhaust their state remedies by appealing Humboldt's juryless enforcement action to state court. But "exhaustion of state administrative remedies is not a prerequisite to an action under § 1983[.]" *Patsy* v. *Bd. of Regents*, 457 U.S. 496, 507 (1982). Moreover, California courts—like the courts below—cannot decide the incorporation question that *Bombolis* foreclosed. *Nationwide Biweekly Admin., Inc.* v. *Superior Ct.*, 462 P.3d 461, 490 (Cal. 2020) ("The federal civil jury trial provision of the Seventh Amendment applies only to civil trials in *federal court*[.]"). Requiring Petitioners to raise their Seventh

Amendment claim in an administrative appeal would only force them to endure the very unconstitutional proceeding they challenge while accomplishing nothing. Cf. *Axon Enter., Inc.* v. *FTC*, 598 U.S. 175, 191 (2023) ("[Petitioners'] claim, again, is about subjection to an illegitimate proceeding, led by an illegitimate decisionmaker.").

Inadequate briefing. The County cautions (BIO 21) that Petitioners' Seventh Amendment claim "was not seriously briefed" below and "was touched upon only in passing by the 9th Circuit." At risk of belaboring the point, though, the limited briefing below reflects that *Bombolis* forecloses the claim from meaningful consideration—a point the County (unsurprisingly) embraced in seeking the claim's dismissal on the pleadings. Appellees' C.A. Br. 81 ("[Petitioners] ask this Court to ignore stare decisis, and rewrite Seventh Amendment precedent.").

Facial challenge. The County suggests (BIO 30–31) that review is disfavored because it has not yet deprived Petitioners of their jury right, making this a "facial attack." This argument mistakes a pre-enforcement challenge for a facial one. And more fundamentally, Petitioners' Question Presented implicates no distinctions between facial and as-applied relief. The court of appeals affirmed the dismissal of Petitioners' Seventh Amendment claim solely on incorporation grounds. Pet. App. 12. Contrary to the County's suggestions (BIO 31, 32), addressing incorporation does not require this Court to decide whether Humboldt's enforcement regime is unconstitutional in *any* instance, let alone *every* instance.

Undeveloped record with "hotly disputed facts." The County argues (BIO 22–26) that review at the pleadings stage is inappropriate, especially when a complaint's allegations are "vigorously contested."[2] It says (BIO 34, 36) that this Court's review would benefit from "an adequate record." But this Petition does not ask *how* the Seventh Amendment would apply in this case; it asks whether the Seventh Amendment applies to state-court proceedings *at all*. That issue is purely legal (hence the 12(b)(6) dismissal) and requires no further factual development.

Ripeness. The County asserts (BIO 26–27) that the district court's opinion shows "unresolved ripeness issues." But the Ninth Circuit reversed the district court's ripeness decisions, see Pet. App. 3a–5a, 30a–39a, none of which involved Petitioners' Seventh Amendment claim. There's never been any dispute that Petitioners timely requested a hearing at which no jury is available. See BIO 18 (excusing the hearings' delays); BIO 30, 42 (confirming juries aren't available).

Constitutional avoidance. The County suggests (BIO 23, 26, 28) that constitutional avoidance counsels against *certiorari* because Petitioners' four other constitutional claims below "may provide Petitioners the relief they seek without reaching novel questions under the Seventh Amendment" or, alternatively, the

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[2] Despite the County's grudging recognition (BIO 26) that the factual disputes resolve in Petitioners' favor, and the Ninth Circuit's holding that Petitioners stated four plausible claims, Pet. App. 5a–12a, 43a–47a, the County still contests Petitioners' factual allegations. *E.g.*, BIO 7, 14, 23–26, 45. Those disputes, however, relate only to Petitioners' *other* constitutional claims and not the Question Presented.

County may win on those claims. Petitioners' Seventh Amendment claim stands independently of those other claims, though. See Pet. 27. It has been finally adjudicated below and will not be affected by a decision that the County also violated Petitioners' due-process rights or imposed excessive fines. No decision below can secure Petitioners' right to a jury for penalties over their still-existing alleged code violations. See BIO 3–20 (insisting the alleged violations still exist). At best, rather than facing millions in fines at an untimely hearing with no jury, Petitioners could face thousands in fines at a timely hearing with no jury.

"Some" issues may become moot. After this Court requested a response to the Petition, the County proposed legislative amendments to reduce some of the constitutional harm caused by their code-enforcement policies. See BIO 28–30. It suggests (BIO 28) the amendments are "likely to moot *many* of Petitioners' claims." (Emphasis added). Despite the implication, however, these amendments do not touch Petitioners' Seventh Amendment claim.[3] Indeed, the County concedes as much. It asserts (BIO 30, 42) that it "cannot administratively empanel a jury" and "cannot provide for an appeal to a jury" under California law. For much the same reason that the County's constitutional-avoidance argument fails, so does its suggestion of mootness: Petitioners will still face enforcement actions without a jury. See BIO 3–20, 30, 42.

Cannabis. The County tries (BIO 35, 37, 43, 45) to make this Petition about cannabis. It warns (BIO 37)

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[3] In truth, the amendments are not retroactive and thus have no obvious effect on any of Petitioners' claims. See *Evangelatos* v. *Superior Ct.*, 753 P.2d 585, 597 (Cal. 1988); Cal. Civ. Code § 3 ("No part of it is retroactive, unless expressly so declared.").

that providing a jury for Petitioners' land-use penalties "would enable [] illicit conduct." The whole point of this case, though, is that Petitioners did not grow cannabis but are being punished as if they did. Petitioners have not challenged the County's penalties for unpermitted cannabis growth. Their case, rather, focuses on the penalties and enforcement procedures that the County applies to standard land-use violations because it *presumes* that every unpermitted outbuilding—even ones built by prior owners—must contain cannabis. Deciding whether Humboldt's enforcement actions must comply with the Seventh Amendment will not sanction illicit conduct any more than *Ramos* or *Duncan* v. *Louisiana*, 391 U.S. 145 (1968), did by requiring criminal juries.

Incorporation would require jury trials. The County warns (BIO 42) that taking away the "flexibility" to deny jury trials will hurt its ability to enforce cannabis laws and "protect public health and safety." By design, however, "[t]he enshrinement of constitutional rights necessarily takes certain policy choices off the table." *McDonald*, 561 U.S. at 790 (plurality) (citation omitted); Pet. App. 47a (Ninth Circuit making the same point). And besides, juries have not stopped the states from vigorously enforcing criminal prohibitions on cannabis since *Duncan* recognized the criminal-jury right's incorporation back in 1968.

Remarkably, the County also suggests (BIO 42) that juries are bad for the accused. Compared to the sophisticated parties in *Jarkesy*, the County frets, residents in Humboldt County are generally too "poor" and "unsophisticated" for jury trials. It warns that providing a jury would force "[f]ixed-income retirees such as the Thomases" to hire a lawyer. Of course,

incorporating the Seventh Amendment would in no way *require* defendants to demand a jury. Moreover, the County's claim of benevolent paternalism ignores that people fined millions of dollars (including Petitioners) will feel pressure to lawyer up regardless of whether there's a jury.

Culpability. Finally, the County suggests (BIO 36–37, 45) this case is a bad vehicle because the government has already determined that Petitioners are bad actors making "feverish" claims that the district court found "implausible." See also BIO 27 (detailing the district court's since-reversed treatment of Petitioners' other claims). Faced with similar arguments, the Ninth Circuit viewed "the district court's dismissiveness of Plaintiffs' well-pleaded allegations" as "cause for concern." Pet. App. 16a. More to the point: The County's insistence that "Petitioners are culpable" and "directly responsible" for the alleged violations (BIO 7, 20, 36) highlights the importance of the civil jury as "an especially vital shield for liberty in * * * suits between private citizens and the government." Calabresi *Amici* 8–9; see also Cato *Amicus* 9–10.

With the County's mind made up before an evidentiary hearing, it's little wonder its code-enforcement officers warn that the County never loses an administrative hearing before "[thei]r people." Pet. App. 167a–168a. Threats of biased decision-making and governmental overreach are the core reason our legal tradition so closely guards the fundamental right to a jury.

CONCLUSION

Win or lose, Petitioners' Question Presented is important and warrants this Court's consideration. The Court should grant the petition.

July 29, 2025

Respectfully submitted,

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